

## **REMARKS**

Claims 1-22 are pending in the Application and all have been rejected in the final Office action mailed December 28, 2007. Claims 1, 2, 9, 16, and 22 are amended by this response. Claims 1, 16, and 22 are independent claims. Claims 2-15 and 17-21 depend from independent claims 1 and 16, respectively.

The Applicant respectfully requests reconsideration of pending claims 1-22, in light of the following remarks.

### **Rejections of Claims**

Claims 1-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Criss et al. (US 2001/0029178 A1, hereinafter "Criss") in view of Angelo et al. (US 5,974,250, hereinafter "Angelo"). Claims 13-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Criss in view of Angelo, and further in view of Hayes, Jr. et al. (US 5,974,312, hereinafter "Hayes"). The Applicant respectfully traverses the rejections for the reasons set forth during prior prosecution, and in addition, those set forth below.

Applicant respectfully submits that the Office action has failed to establish a *prima facie* case of obviousness, in accordance with M.P.E.P. §2142. According to M.P.E.P. §2142, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." M.P.E.P. §2142 further states that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." As recognized in M.P.E.P. §2142, "[t]he Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1396 noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." In addition, the Federal Circuit has made clear that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*,

441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396. M.P.E.P. §2142 also states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.”

As an initial matter, Applicant respectfully submits that the Examiner is misinterpreting the language of the claims. The Office insists on enforcing an arbitrary definition of the term “node”, and ignores the subject matter of Applicant’s disclosure that would make the meaning of this term immediately clear to one of ordinary skill in the relevant art. Applicant raised this issue in the previously filed response. See Response of October 12, 2007 at page 18.

According to M.P.E.P. §707(a)(1):

On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

(underline added)

In addition, M.P.E.P. §2141(II)(a) states:

In determining the scope and content of the prior art, Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application under examination by reading the specification, including the claims, to understand what the applicant has invented. See MPEP § 904.

(underline added)

The M.P.E.P. at §2183.01 also states the following:

A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they

choose so long as any special meaning assigned to a term is clearly set forth in the specification. See MPEP § 2111.01. Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.

Applicant respectfully submits that the Examiner arbitrarily defines the term "node", without explanation of how or why the definition was chosen, and without citation to authority. Specifically, in response to Applicant's arguments that the Criss and Angelo references fail to teach a "node" or a "nodes preprocessor", as recited in Applicant's claims, the Office states that "...it is brought to the attention of the applicant's representative that a node is a connection point, either redistribution or an end point for data transmission, hence, a base station does fit the definition of what a nodes does in a network." See Office action at page 2. Applicant respectfully submits that the Office fails to identify the source of the selected definition, and fails to explain why the Office insists on using this definition when, upon reading Applicant's Specification, it would be clear to one of ordinary skill in the relevant art that such a definition is not consistent with the use of the term in Applicant's disclosure.

In addition, Applicant respectfully submits that the Office is inconsistent in its use of its own definition of "node". For example, at page 2, the Office brings it to Applicant's Representative's attention that "...a node is a connection point, either redistribution or an end point for data transmission, hence, a base station does fit the definition of what a nodes does in a network...." (emphasis added) See *id.* at page 2. However, at pages 7 and 8, with respect to Applicant's feature "...determining a list of nodes in the old and new images of the firmware..." recited in amended claims 16 and 22, the Office asserts that "...Hayes et al. teaches [] limitation (wireless manager, abstract, col. 15 lines:4-9, has list of blocks needed to be updated)." (emphasis added) Applicant respectfully submits that a "base station", which the Office asserts "...does fit the definition of what a node does in a network..." is different from and does not teach a "block needed to be

updated", as asserted by the Office with respect to the rejection of claims 16 and 22. If Applicant has misunderstood the Examiner's intended definition of the term "node", Applicant respectfully requests that the Examiner clearly and specifically explain how the definition brought to Applicant's Representative's attention by the Office is to be consistently interpreted in the rejection of each claim rejection.

Applicant understands that limitations in the Specification are not to be read into the claims. In order to further clarify the intended use of the term "node", Applicant has amended claims 1, 16, and 22, as shown above. Support for these clarifying amendments may be found, for example, at paragraphs [27], [28], and [36]-[44] of the Specification. Applicant respectfully requests that the finality and rejections of the Office action be withdrawn, and that the Office reconsider the pending claims in view of these clarifying amendments.

#### **I. The Proposed Combination Of Criss And Angelo Does Not Render Claims 1-12 Unpatentable**

In order to further clarify the subject matter of claim 1, Applicant has amended claim 1 to recite "[a] mobile services network comprising: a mobile electronic device; a management server; an update package repository; a generator with nodes preprocessor, which generates a package of update information; and wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware."

Applicant respectfully submits that the proposed combination of references does not teach, at least, "wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware."

The Office asserts that Criss discloses "...generator preprocessor (paragraph [0060]) and nodes (fig. 1, 5, 7; paragraph [0052], [0062], [0065]; Criss et al. teaches the

update package either requested by the user of mobile device or by the mobile device is [sic] able to determine what filenames it needs on the update package, hence., nodes)." See Office action at page 4. Applicant respectfully disagrees.

Applicant respectfully submits that it appears that the Office has simply repeated it prior rejection of claim 1. Although Applicant does not repeat the arguments for allowability previously presented, Applicant respectfully maintains that the proposed combination of Criss and Angelo does not teach or suggest the features of Applicants amended claim 1, for at least the reasons previously presented. See Response of October 12, 2007.

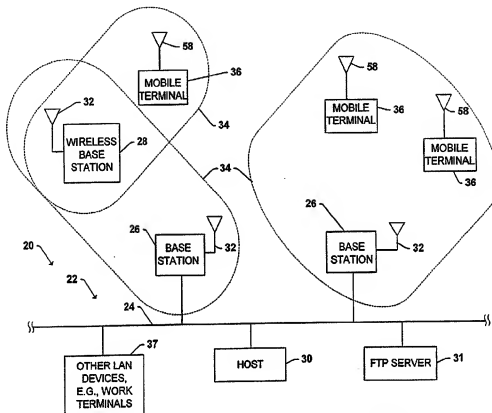
Applicant also respectfully submits that the proposed combination of references does not teach or suggest, at least, "...a generator with nodes preprocessor, which generates a package of update information;..." and "...wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware...", as recited by Applicant's amended claim 1. Applicant first addresses the alleged teachings of Criss at paragraph [0060], which states:

Referring now to FIG. 3b, a block diagram of the FTP server 31 is provided. Similar to the host computer 30, the FTP server 31 includes a processor 65 coupled to the system backbone 24 through a transceiver 71 and connector 73. A memory 67 is coupled to the processor 65. As will be described in more detail below, the memory 67 is updated with the latest version of software for each of the mobile terminals 36. For example, a system administrator may install revised versions of software in the memory 67.

Applicant respectfully submits that the above portion of Criss simply describes the interconnections of the elements of FIG. 3b of Criss, and that a system administrator may update memory in mobile terminals. This portion of Criss does not, however, teach or suggest "a generator ... that generates a package of update information", and does

not teach or suggest Applicant's feature "...wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...." Therefore, Applicants respectfully submit that paragraph [0060] of Criss, specifically cited by the Office, does not teach or suggest at least this aspect of Applicant's amended claim 1.

Next, Applicant turns to the alleged teachings of FIG. 1 of Criss. Applicant respectfully submits that FIG. 1 is, according to Criss at paragraph [0019], "... a block diagram of a wireless communication system in accordance with an exemplary embodiment of the present invention." A copy of FIG. 1 of Criss is shown below:



**Fig. 1**

While Applicant recognizes that FIG. 1 of Criss teaches the elements and interconnections of various components of an exemplary wireless communication system, Applicant respectfully submits that FIG. 1 of Criss does not teach or suggest a “node” or a “nodes preprocessor” in accordance with Applicant’s claim 1, does not teach or suggest “a generator ... that generates a package of update information”, and does not teach or suggest Applicant’s feature “...wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages....”

Therefore, Applicants respectfully submit that FIG. 1 of Criss, specifically cited by the Office, does not teach or suggest at least these aspects of Applicant's amended claim 1.

Applicant next addresses the alleged teachings of FIG. 5 of Criss. Applicant respectfully submits that Criss does not contain a "FIG. 5". Applicant made note of this in the Response filed October 12, 2007. Criss does, however, contain FIGs. 5a, 5b, 5c, and 5d, copies of which are shown below:

Package Definition Files:

**Fig. 5a**

Package Name	Version ID, Req. Memory, Mode	File Name	Mobile Ter. Path	FTP Path	Type	ROM/RAM
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**Fig. 5b**

Package A	6.2, 200KB, replace	filename_A1	mpath A1	ftppath A1	...	ROM
		filename_A2	mpath A2	ftppath A2	...	RAM
		.	.	.	...	.
		.	.	.	...	.
		filename_An	mpath An	ftppath An	...	ROM

**Fig. 5c**

Package B	A3, 150KB, fail safe	filename_B1	mpath B1	ftppath B1	...	RAM
		filename_B2	mpath B2	ftppath B2	...	RAM
		.	.	.	...	.
		filename_Bn	mpath Bn	ftppath Bn	...	ROM
...	...	...	...	...	...	...

**Fig. 5d**

Package Z	1.9, 320KB, replace	filename_Z1	mpath Z1	ftppath Z1	...	ROM
		filename_Z2	mpath Z2	ftppath Z2	...	RAM
		.	.	.	...	.
		filename_Zn	mpath Zn	ftppath Zn	...	RAM



Applicant respectfully submits that at paragraph [0024], Criss states that FIG. 5a "...illustrates the general format of the package definition files stored in memory within the host computer, wherein each package definition file includes information identifying operating software to be used by mobile terminals within the system and information indicating the version of the operating software...." Criss also states, at paragraph [0025], that "...FIGS. 5b, 5c and 5d represent exemplary package definition files...."

Although FIGs. 5a, 5b, 5c, and 5d teach formats of "exemplary package definition files", Applicant respectfully submits that none of FIGs. 5a, 5b, 5c, and 5d teach or suggest a "node" or a "nodes preprocessor" in accordance with amended claim 1, none teach or suggest "a generator ... that generates a package of update information", and none teach or suggest Applicant's feature "...wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...." Therefore, Applicants respectfully submit that FIGs. 5a, 5b, 5c, and 5d of Criss, specifically cited by the Office, do not teach or suggest at least these aspects of Applicant's amended claim 1.

Applicant continues by addressing the alleged teachings of paragraph [0052] of Criss, which states:

Accordingly, when a system operator wishes to change the operating software of one or more mobile terminals 36 within the system 20, the system operator loads the upgraded software into the FTP server 31 as discussed below. Included with each version of operating software is a unique identifier indicative of the particular version. The system administrator also updates the host computer to correspondingly reflect the modifications to the current software loaded in the FTP server. In particular, the system administrator updates the host computer with sufficient information to communicate those fields provided in the package definition files discussed below with respect to FIGS. 5a-5d. Then, when a mobile terminal 36 is next queried by the host computer regarding which version of

operating software is being run, the mobile terminal 36 will be informed by the host computer 30 that the FTP server 31 has an upgraded version causing the mobile terminal 36 to request that the upgraded operating software be downloaded from the FTP server 31.

Applicant respectfully submits that the above portion of Criss merely teaches that a system operator wishing to update operating software in a mobile terminal loads the updated software onto a server along with a unique identifier indicating the version. When the mobile terminal is next queried by the server, the mobile terminal is informed of an upgraded version, causing the mobile terminal to request a download of the upgraded version of operating software. The portion of Criss shown above, however, does not teach or suggest teach or suggest a "node" or a "nodes preprocessor" in accordance with amended claim 1, does not teach or suggest "a generator ... that generates a package of update information", and does not teach or suggest Applicant's feature "...wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...." Therefore, Applicants respectfully submit that paragraph [0052] of Criss, specifically cited by the Office, does not teach or suggest at least these aspects of Applicant's amended claim 1.

Applicant now addresses the alleged teachings of paragraph [0062] of Criss. Applicant respectfully submits that paragraph [0062] states:

Also stored in the memory 66 is a collection of package definition files as represented in FIGS. 5a-5d. Specifically, the memory 66 includes a different package definition file for each particular package name included in the boottab table shown in FIG. 4. FIG. 5a illustrates generally the various information fields included in each package definition file, whereas FIGS. 5b-5d provide illustrative examples of different package definition files. Each package definition file includes a version identifier (e.g., 6.2, A3, 1.9, etc.) which is a unique identifier of the

particular version of the operating software associated with that particular package name. Each time one or more software files included in the operating software associated with a given package name is added, deleted or modified within the FTP server 31, the version identifier stored in the package definition file for that package name is modified to a new, unique identifier. The new identifier stored in the package definition files as discussed below is manually entered into the host computer 30 by a system administrator or the like, for example.

Applicant respectfully submits that the above portion of Criss simply teaches that the memory is used to stored "package definition files" having various format and containing various fields, including a manually entered "version identifier" of an operating software version of a particular package. Nothing in this cited portion of Criss, however, teaches or suggests a "node" or a "nodes preprocessor" in accordance with amended claim 1, or "a generator ... that generates a package of update information" wherein "...generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...." Therefore, Applicant respectfully submits that paragraph [0062] of Criss, also specifically cited by the Office, does not teach or suggest at least these aspects of Applicant's amended claim 1.

Finally, Applicant turns to the alleged teachings of paragraph [0065] of Criss, which states:

Each time a system administrator updates any portion of the operating software stored in the memory 67, the system administrator also is responsible for assigning a new version identifier in the corresponding package definition file. For example, file names may be added or deleted from a package. Alternatively, one or more files may be modified. In either case, the operating software represents a new version. Once updated, the system administrator also updates the host computer 30 with sufficient information to

produce for the mobile terminals 36 the package definition files discussed above with respect to FIGS. 5a-5d.

While the portion of Criss shown above teaches that a system administrator is responsible for assigning a new "version identifier" in a package definition file each time any portion of operating software is updated, Applicant respectfully submits that the above portion of Criss, specifically cited in the Office action, does not teach or suggest a "node" or of a "nodes preprocessor" in accordance with Applicant's amended claim 1. The portion of Criss shown above also does not teach or suggest "a generator ... that generates a package of update information", and does not teach or suggest Applicant's feature "...wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...." Therefore, Applicant respectfully submits that paragraph [0065] of Criss, specifically selected by the Office, does not teach or suggest at least these aspects of Applicant's amended claim 1.

Applicant respectfully submits that neither the cited portions and figures of Criss shown above, nor any other text or figure of Criss teaches or suggests, at least, a "node" or a "nodes preprocessor", or "a generator ... that generates a package of update information" wherein "...generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...", as recited by Applicant's amended claim 1.

Applicant appreciates recognition by the Office that Criss "...does not specifically include a management server..." The Office, however, then asserts that Angelo "...teaches a management server (col. 7 lines 18-22, SMI system management mode)." See Office action at page 4. Applicant will now address the alleged teachings of Angelo at column 7, lines 1-22, with regard to the features of Applicant's amended claim 1.

According to Angelo, at column 7, lines 15-23:

Continuing to refer to FIG. 7, a second pathway, pathway 709B, via generating a System Management Interrupt ("SMI"), may also be used for preparing the node to enter a secure state. By triggering an SMI, the node may be placed into a System Management Mode (steps 705 and 706) which calls for a handler that is located in a secure portion of a memory associated with the node. As can be appreciated, by executing the SMI handler in the SMM the node may be placed into a known secure state.

This portion of Angelo teaches that by triggering a "System Management Interrupt", a handler in a secure portion of memory associated with a node may place the node in a "known secure state". The portion of Angelo shown above, however, does not teach or suggest, at least, a "node" or a "nodes preprocessor" in accordance with amended claim 1, "a generator ... that generates a package of update information", and does not teach or suggest Applicant's feature "...wherein generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...." Therefore, Applicant respectfully submits that column 7, lines 18-22 of Angelo, specifically selected by the Office, does not teach or suggest at least these aspects of Applicant's amended claim 1. Applicant also respectfully submits that the Office action has failed to identify anything in Angelo that teaches or suggests a these aspects of Applicant's amended claim 1. Therefore, Applicant respectfully submits that the Office has failed to show where either Criss or Angelo teach or suggest, at least, a "node" or a "nodes preprocessor", or "a generator ... that generates a package of update information" wherein "...generating comprises identifying as nodes corresponding locations in an old version of firmware for the mobile electronic device and a new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted based upon the old version of firmware that generates on of update packages...", as recited by Applicant's

amended claim 1. Applicant has reviewed the Criss and Angelo references, and is unable to identify teachings of at least these aspects of Applicant's amended claim 1. If Applicant has inadvertently overlooked such teachings, Applicant respectfully requests that the Office specifically identify the relevant portions and/or figures, providing a reasoned explanation of how and why the cited teachings of the reference(s) are combined to realize Applicant's invention.

Based at least upon the above, the Applicant respectfully submits that the proposed combination of Criss and Angelo fails to teach or suggest each and every limitation of Applicant's amended claim 1, that the Office has failed to establish a *prima facie* case of obviousness, and that a rejection of amended claim 1 under 35 U.S.C. §103(a) cannot be maintained.

Therefore, Applicant believes that amended claim 1 is allowable over the proposed combination of Criss and Angelo, for at least the reasons set forth above. Applicant respectfully submits that claims 2-15 depend either directly or indirectly from claim 1. Because claims 2-15 depend from allowable claim 1, Applicant respectfully submits that claims 2-15 are also allowable, for at least the same reasons. Accordingly, Applicant respectfully requests that the rejection of claims 1-12 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

## **II. The Proposed Combination Of Criss, Angelo, And Hayes Does Not Render Claims 13-15 Unpatentable**

Applicants respectfully submit that claims 13-15 depend from allowable claim 1. Applicant believes that amended claim 1 is allowable over the proposed combination of Criss, Angelo, and Hayes, in that Hayes fails to overcome the shortcomings of Criss and Angelo, set forth above. Applicants respectfully submit that because claim 1 is allowable over the proposed combination of references, dependent claims 13-15 are also allowable, for at least the same reasons. Therefore, Applicants respectfully request that the rejection of claims 13-15 under 35 U.S.C. 103(a) be reconsidered and withdrawn.

### **III. The Proposed Combination Of Criss, Angelo, And Hayes Does Not Render Claims 16-22 Unpatentable**

With regard to amended independent claims 16 and 22, Applicant respectfully submits that claims 16 and 22 recite limitations similar to those of amended claim 1. Applicant respectfully submits that Hayes does not remedy the shortcomings of Criss and Angelo, set forth above. Therefore, Applicant believes that claims 16 and 22 are allowable over the proposed combination of references, for at least the reasons set forth above. Because claims 17-21 depend from claim 16, Applicant respectfully submits that claims 17-21 are also allowable, for at least the same reasons. Accordingly, Applicant respectfully requests that the rejections of claims 16-22 be reconsidered and withdrawn.

### **Conclusion**

In general, the Office action makes various statements regarding the claims and the cited reference that are now moot in light of the above. Thus, Applicant will not address such statements at the present time. However, Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

The Applicant believes that all of pending claims 1-22 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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